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F., J.

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Basilian Fathers
The Aquinas Institute of Rochester

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State of New York

MONROE COUNTY CLERK'S OFFICE
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ADAM J BELLO

MONROE COUNTY CLERK



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

-----X

J.F.,

Plaintiff,

COMPLAINT

-against-

BASILIAN FATHERS a/k/a CONGREGATION OF ST. BASIL
a/k/a CONGREGATION OF ST. BASIL-AQUINAS INSTITUTE
a/k/a THE BASILIAN FATHERS OF AQUINAS INSTITUTE,
INC. a/k/a THE BASILIAN FATHERS OF THE STATE OF NEW
YORK, INC. and THE AQUINAS INSTITUTE OF ROCHESTER
a/k/a THE AQUINAS INSTITUTE,

Index No.

Defendants.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, J.F., by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

INTRODUCTION

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. Plaintiff, when he was a minor, was sexually assaulted and abused by Father John Seniawski (hereinafter referred to as "Father Seniawski") and Father Ronald Schwenzer (hereinafter referred to as "Father Schwenzer"), priests and members of the Basolian Fathers, while seeking the assistance and aid in the form of food vouchers from the Aquinas Institute of Rochester, a Catholic preparatory school. The Basolian Fathers owned, operated, managed, maintained and/or controlled Aquinas Institute of Rochester.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of the State of New York. Plaintiff brings this Complaint anonymously because of the sensitive nature of the allegations of child sexual abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment and further psychological damage if his identity as a victim of child sexual abuse were to become publicly known.

2. Defendant, BASILIAN FATHERS a/k/a CONGREGATION OF ST. BASIL a/k/a CONGREGATION OF ST. BASIL-AQUINAS INSTITUTE a/k/a THE BASILIAN FATHERS OF AQUINAS INSTITUTE, INC. a/k/a THE BASILIAN FATHERS OF THE STATE OF NEW YORK, INC. (hereinafter referred to as "BASILIAN FATHERS"), is a Roman Catholic religious order of priests and brothers with a principal place of business in Rochester, New York. BASILIAN FATHERS engages in and operates programs, including schools and charities, involving children and disadvantaged members of the community. At all times relevant and material hereto, BASILIAN FATHERS provided food vouchers to disadvantaged members of the Rochester community. BASILIAN FATHERS is a citizen and resident of the State of New York.

3. Defendant, THE AQUINAS INSTITUTE OF ROCHESTER a/k/a THE AQUINAS INSTITUTE (hereafter referred to as the "AQUINAS INSTITUTE") is a Catholic preparatory school located at 1127 Dewey Avenue, Rochester, New York 14613. At all times relevant and material hereto, AQUINAS INSTITUTE provided food vouchers to disadvantaged members of the Rochester community. AQUINAS INSTITUTE was owned, operated, maintained, controlled and/or otherwise served by BASILIAN FATHERS. AQUINAS INSTITUTE is a citizen and resident of the State of New York.

4. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

5. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York and/or transacts business within the State of New York and/or regularly solicits business in the State of New York and/or otherwise falls within the jurisdiction of the Court pursuant to CPLR § 302.

6. Venue of this action lies in Monroe County as a substantial part of the events or omissions giving rise to the claim occurred in Monroe County or one of the Defendants resides in Monroe County.

BACKGROUND AND FACTS OF SEXUAL ABUSE

7. At all times relevant and material hereto, AQUINAS INSTITUTE and BASILIAN FATHERS were associated in the ownership, operation, management, and/or control the AQUINAS INSTITUTE, programs operating within the premises of AQUINAS INSTITUTE and individuals and organizations operating within the premises of AQUINAS INSTITUTE.

8. In approximately 1986, when he was approximately sixteen (16) years old, Plaintiff was homeless minor living in Rochester, New York. Plaintiff became aware that he could obtain food vouchers from AQUINAS INSTITUTE and BASILIAN FATHERS.

9. Plaintiff was brought to the rectory at AQUINAS INSTITUTE to meet with Father Seniawski, a priest and member of BASILIAN FATHERS, under the guise of obtaining food vouchers to a local grocery store.

10. While in the rectory, Father Seniawski sexually assaulted and abused Plaintiff. The acts of sexual assault and abuse committed by Father Seniawski included, but were not limited to, inappropriate touching of Plaintiff, groping and fondling Plaintiff's genitals, forcing Plaintiff to watch him masturbate and masturbating Plaintiff. After the sexual assault, Father Seniawski took Plaintiff to the grocery store and gave him money and food vouchers.

11. Thereafter, Plaintiff was sexually assaulted by Father Schwenzer, a priest and member of BASILIAN FATHERS. The acts of sexual assault and abuse committed by Father Schwenzer included, but were not limited to, inappropriate touching of Plaintiff, groping and fondling Plaintiff's genitals, masturbating Plaintiff, sodomy of Plaintiff and rape.

12. The acts of sexual assault and abuse committed by Father Seniawski and Father Schwenzer occurred on the AQUINAS INSTITUTE campus.

NOTICE – FORESEEABILITY

13. Upon information and belief, Father Seniawski and Father Schwenzer were at all relevant times serial sexual predators who sexually abused multiple boys during their employment by the Defendants.

14. Upon information and belief, the administration, principal and/or staff of AQUINAS INSTITUTE knew or should have known that Father Seniawski and Father Schwenzer were sexually assaulting children on the premises of AQUINAS INSTITUTE.

15. At all relevant times, the Defendants knew or in the exercise of reasonable care should have known that Father Seniawski and Father Schwenzer had a propensity for the conduct which caused injury to Plaintiff, particularly that they had a propensity to engage in the sexual abuse of children.

16. At all relevant times, it was reasonably foreseeable to the Defendants that Father Seniawski and Father Schwenzer would commit acts of child sexual abuse or assault on a child.

17. At all relevant times, the Defendants knew or should have known that Father Seniawski and Father Schwenzer were unfit, dangerous, and a threat to the health, safety and welfare of the children entrusted to their counsel, care and/or protection.

18. With such actual or constructive knowledge, the Defendants provided Father Seniawski and Father Schwenerz unfettered access to Plaintiff and gave them the opportunity to commit foreseeable acts of child sexual abuse or assault.

DUTY

19. At all material times, AQUINAS INSTITUTE and Plaintiff were in a special relationship, in which AQUINAS INSTITUTE owed Plaintiff a duty of reasonable care to protect him from foreseeable harm.

20. At all material times, AQUINAS INSTITUTE and Father Seniawski were in a special relationship of employer-employee, in which AQUINAS INSTITUTE owed a duty to control the acts and conduct of Father Seniawski to prevent foreseeable harm.

21. At all material times, AQUINAS INSTITUTE and Father Schwenerz were in a special relationship of employer-employee, in which AQUINAS INSTITUTE owed a duty to control the acts and conduct of Father Schwenerz to prevent foreseeable harm.

22. AQUINAS INSTITUTE owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while he was under the care, custody or in the presence of AQUINAS INSTITUTE. AQUINAS INSTITUTE's duties included using reasonable care in the retention, supervision and hiring of Father Seniawski and Father Schwenerz and the duty to otherwise provide a safe environment for Plaintiff.

23. AQUINAS INSTITUTE had a duty to exercise reasonable care in the training of agents and staff in the prevention of sexual abuse and protection of the safety of children in its care and/or on its premises.

24. AQUINAS INSTITUTE had a duty to establish and implement policies and procedures in the exercise of reasonable care for the prevention of sexual abuse and protection of the safety of the children in its care and/or on its premises.

25. At all material times the BASILIAN FATHERS, as principal, and AQUINAS INSTITUTE, as agent, were in an agency relationship, such that AQUINAS INSTITUTE acted on the BASILIAN FATHERS's behalf, in accordance with the BASILIAN FATHERS's instructions and directions on all matters, including those relating to the hiring of school personnel. The acts and omissions of AQUINAS INSTITUTE were subject to the BASILIAN FATHERS's plenary control, and AQUINAS INSTITUTE consented to act subject to the BASILIAN FATHERS's control.

26. At all material times, the BASILIAN FATHERS and Plaintiff were in a special relationship, in which BASILIAN FATHERS owed Plaintiff a duty of reasonable care to prevent foreseeable harm.

27. At all material times, BASILIAN FATHERS and Father Seniawski were in a special relationship of employer – employee, in which BASILIAN FATHERS owed a duty to control the acts and conduct of Father Seniawski to prevent foreseeable harm.

28. At all material times, BASILIAN FATHERS and Father Schwenzer were in a special relationship of employer – employee, in which BASILIAN FATHERS owed a duty to control the acts and conduct of Father Schwenzer to prevent foreseeable harm.

29. At all material times, BASILIAN FATHERS owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while he was under the care, custody or in the presence of BASILIAN FATHERS. BASILIAN FATHERS's duties encompassed using reasonable care in the retention, supervision and hiring of Father Seniawski and Father Schwenzer and the duty to otherwise provide a safe environment for Plaintiff.

BREACH

30. Defendants breached their duties by (i) failing to protect Plaintiff from sexual assault and lewd and lascivious acts committed by their agents and employees; (ii) failing to establish policies and procedures that were adequate to protect the health, safety and welfare of children and other vulnerable and disadvantaged members of the community and protect them from sexual abuse; (iii) failing to implement and enforce policies and procedures that were adequate to protect the health, safety and welfare of students and protect them from sexual abuse; (iv) hiring, retaining and/or failing to supervise Father Seniawski and Father Schwenzer when they knew or should have known that they posed a substantial risk of harm to children and other vulnerable and disadvantaged members of the community; and (v) failing to adequately monitor and supervise children and other vulnerable and disadvantaged members of the community on the premises of AQUINAS INSTITUTE.

31. At all relevant times, Defendants had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

32. Defendants concealed their knowledge that Father Seniawski and Father Schwenzer were unsafe and failed to adopt policies and procedures that would protect children and reduce the risk of child sexual abuse by their employees and agents.

33. Defendants failed to warn Plaintiff and similarly situated individuals that they were at risk of sexual abuse.

NATURE OF CONDUCT ALLEGED

34. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral

or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53); and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

35. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendants acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Father Seniawski and Father Schwenzer, to permit Father Seniawski and Father Schwenzer's unfettered access to children.

COUNT I - NEGLIGENCE
(against Defendant BASILIAN FATHERS)

36. Plaintiff repeats and realleges Paragraphs 1 through 35 above.

37. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

38. Defendant's acts and conduct showed a reckless or willful disregard for the safety and well-being of Plaintiff and other children.

COUNT II - NEGLIGENCE
(against Defendant AQUINAS INSTITUTE)

39. Plaintiff repeats and realleges Paragraphs 1 through 35 above.

40. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

41. Defendant's acts and conduct showed a reckless or willful disregard for the safety and well-being of Plaintiff and other children.

WHEREFORE, Plaintiff demands Judgment against Defendants for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

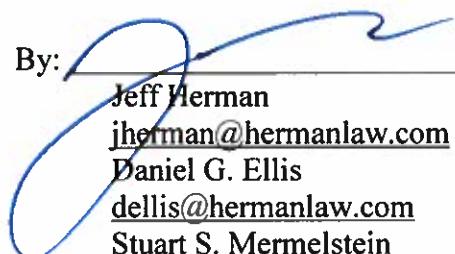
DEMAND FOR JURY TRIAL

Plaintiff demands a Jury Trial in this action.

Dated: New York, New York
November 19, 2019

Respectfully submitted,

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